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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

29 TONY KRAMER, individually and on behalf  
30 of all others similarly situated,

31 Plaintiff,

32 v.

33 FACEBOOK, INC.

34 Defendant.

Case No.:

**CLASS ACTION**

COMPLAINT FOR BREACH OF  
CONTRACT, BREACH OF DUTY OF  
GOOD FAITH AND FAIR DEALING,  
ACCOUNTING, AND VIOLATION  
OF CAL. BUSINESS AND  
PROFESSIONS CODE §17200 ET  
SEQ.

**JURY TRIAL DEMANDED**

1 NOW COMES Plaintiff Tony Kramer, individually and on behalf of all others similarly  
2 situated, by and through counsel, and, upon personal knowledge as to facts known to Plaintiff, and  
3 as to all other facts upon information and belief following investigation of counsel, alleges as  
4 follows against Defendant Facebook, Inc. (“Facebook”):

5 **INTRODUCTION**

6 1. Facebook sells advertising space on its social media platform by offering access to  
7 its users. This case seeks relief for Plaintiff and similarly situated “Advertisers” who purchased  
8 cost-per-click (“CPC”) or cost-per-impression (“CPM”) advertisements (“Ads”) displayed to users  
9 throughout Facebook’s social network including, without limitation, the Facebook mobile  
10 application (“Mobile App”).

11 2. The target audience of Facebook’s advertising is, of course, its users. Most users  
12 browse Facebook’s platform using the Mobile App and, therefore, most advertising spending on  
13 Facebook targets Mobile App users (as opposed to those accessing the Facebook website with a  
14 desktop or laptop computer).

15 3. Facebook advertisers who pay on a CPM basis pay a fee each time their Ad is  
16 published on Facebook’s platform, regardless of whether any Facebook user clicks on their Ad.  
17 Advertisers who pay on a CPC basis pay a fee each time their published Ad is clicked by a  
18 Facebook user. CPM and CPC Ads together comprise the vast majority of Facebook’s advertising  
19 revenue.

20 4. An Advertiser agrees to pay Facebook money to run a CPM or CPC advertising  
21 campaign, and Facebook debits the Advertiser’s account as the Ads are published or clicked.

22 5. For a CPC Ad, Facebook debits money from the Advertiser’s account on a per-  
23 click basis, according to Facebook’s internal record of clicks and the predetermined per-click rate.  
24 Thus, when a Facebook user clicks on a CPC Ad published on the Mobile App, Facebook records  
25 the click and debits the Advertiser’s account accordingly.

26 6. In addition to debiting Advertisers for CPC Ad clicks initiated by Mobile App users  
27 – and unbeknownst to Advertisers, or Mobile App users to whom the CPC Ad is published –  
28 Facebook itself clicks on CPC Ads and charges those clicks to Advertisers.



1 resident of the State of California; and (iii) based on the total value of the claims and relief sought  
2 by Plaintiff individually and on behalf of the Class, the total amount in controversy exceeds  
3 \$5,000,000. The proposed Class numbers in excess of 100 persons.

4 15. Venue is proper before the Court pursuant to 28 U.S.C. § 1391(b) because, *inter*  
5 *alia*, Defendant resides in this judicial District, and a substantial part of the events or omissions  
6 giving rise to the claims occurred here.

7 16. Facebook's standardized contract terms provide that disputes are to be governed by  
8 California law and raised in this judicial venue, and Facebook and the Advertisers are subject to  
9 the personal jurisdiction of the Court.

#### 10 **FACTUAL ALLEGATIONS**

11 17. Facebook is an advertising business. Facebook is the world's largest social  
12 network, with more than 1.40 billion daily active users and 2.13 billion monthly active users.<sup>1</sup>  
13 Facebook employs this social network to sell advertising.

14 18. Facebook reported \$26.885 billion in advertising revenue for 2016, representing  
15 97.275% of all of Facebook's revenue and a 57% increase over 2015.<sup>2</sup>

16 19. Facebook reported nearly \$39.942 billion in advertising revenue for 2017,  
17 representing 98.251% of all Facebook's revenue and a 49% increase over 2016.<sup>3</sup>

18 20. Facebook's sale of Ads on the Mobile App represents the vast majority of its  
19 overall revenue.<sup>4</sup>

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24 <sup>1</sup> <https://investor.fb.com/investor-news/press-release-details/2018/facebook-reports-fourth-quarter-and-full-year-2017-results/default.aspx>, last accessed May 24, 2018.

25 <sup>2</sup> <https://investor.fb.com/investor-news/press-release-details/2017/Facebook-Reports-Fourth-Quarter-and-Full-Year-2016-Results/default.aspx>, last accessed May 24, 2018.

26 <sup>3</sup> <https://investor.fb.com/investor-news/press-release-details/2018/facebook-reports-fourth-quarter-and-full-year-2017-results/default.aspx>, last accessed May 24, 2018.

27 <sup>4</sup> Felix Richter, *Facebook's Growth Is Fueled by Mobile Ads* (Feb. 1, 2018), available at  
28 <https://www.statista.com/chart/2496/facebook-revenue-by-segment/>, last accessed May 24, 2018.

**How Facebook CPC and CPM Advertising Works**

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21. For a CPC Ad, Facebook charges an Advertiser a fee based upon, *inter alia*, the stated “cost per click” for the relevant billing period, multiplied by the number of clicks Facebook counts or registers for that CPC Ad.

22. For a CPM Ad, Facebook charges an Advertiser a fee based upon, *inter alia*, the stated “cost per impression” for the relevant billing period, multiplied by the number of user views Facebook registers for that CPM Ad.

23. Facebook allows Advertisers to choose parameters for their Ad campaigns, but within those parameters Facebook decides when and to whom it publishes the Ads.

24. CPC Ads published on the Facebook platform by Plaintiff and other Advertisers commonly include embedded hyperlinks. When a Facebook user clicks a CPC Ad, the user is directed to the Advertiser’s desired location—*e.g.*, the Advertiser’s web page at which the user may view or purchase advertised products or services.

25. An Advertiser can create a CPC or CPM Ad through the “Ad Manager” tool connected to a personal or business profile within Facebook’s network, and have a credit card or other payment instrument (“Payment Instrument”) registered with the Advertiser’s account with Facebook.

26. Facebook permits Advertisers to set an Ad budget (“Ad Budget”) and a schedule during which the Ad may be displayed to Facebook users.

27. The Ad Budget is the amount of money an Advertiser is willing to pay for Facebook users manually clicking on the Advertiser’s CPC Ad or viewing the Advertiser’s CPM Ad.

28. For CPC Ads, Facebook records clicks using its own “back end” technology, which it does not make available to Advertisers. For each time a user clicks on Advertiser’s CPC Ad, Facebook debits the Advertiser’s Ad Budget by the associated cost-per-click amount imposed by Facebook.

1           29.     For CPM Ads, Facebook records user views using its own “back end” technology,  
2 which it does not make available to Advertisers. Each time a user views an Advertiser’s CPM Ad,  
3 Facebook debits the Advertiser’s Ad Budget by the associated cost-per-impression imposed by  
4 Facebook.

5           30.     When the Ad Budget is exhausted, or alternatively if the Ad Budget isn’t exhausted  
6 but the Advertiser’s run time for the Ad has ended, the CPC Ad is no longer displayed to  
7 Facebook users. Periodically, Facebook will automatically debit the Advertiser’s Payment  
8 Instrument for the cost of clicks Facebook records during the period.

9           31.     As part of Facebook’s advertising service that CPC and CPM Advertisers pay for,  
10 Facebook provides Plaintiff and other Advertisers with valuable Ad statistics through, among  
11 other things, Facebook’s “Ad Manager,” itemizing the Advertiser’s CPC or CPM Ad and  
12 associated data, such as chronicles of click performance, Ad impressions, Ad costs-per-click and  
13 costs-per-impression, and amounts charged to the Advertiser for the CPC Ad clicks and CPM Ad  
14 views. Advertisers rely upon those Facebook-reported statistics in making decisions about  
15 advertising on Facebook.

16           32.     Some CPM Ads contain Ad links, just like CPC Ads, which enable users to click  
17 on a link, for example, that takes them to the Advertiser website. For both CPC Ads and CPM Ads  
18 with an Ad link, Facebook Ad metrics inform Advertisers about the performance or number of  
19 link clicks.

#### 20                           **Facebook’s Use of the Mobile App and Stealth Click Charges**

21           33.     Ads may be displayed to Facebook users through an internet web browser or via  
22 the Mobile App. The Mobile App is a Facebook software application that may be downloaded  
23 and utilized by Facebook users on Apple iOS or Android mobile devices.

24           34.     Facebook users using an internet web browser can navigate Facebook pages,  
25 advertisements, and other content. A Mobile App user can also navigate the same Facebook pages  
26 and advertisements.

27           35.     When a Mobile App user clicks on a CPC Ad, Facebook charges the Advertiser the  
28 cost-per-click for that Ad.

1           36. Plaintiff alleges that the Mobile App itself causes Stealth Clicks to be registered  
2 against Ads appearing on a Mobile App user’s device screen—while the user is navigating  
3 Facebook pages and advertisements thereon (*e.g.*, by scrolling through the Mobile News Feed)—  
4 without and even though the user has not performed a manual click function (*e.g.*, screen tap to  
5 visit the Advertiser’s page). Without access to Facebook’s back-end technology through  
6 discovery, it is impossible for Plaintiff to understand precisely why, how, and when Facebook  
7 counts and charges for Stealth Clicks.

8           37. Facebook registers a Stealth Click when Facebook’s software code in the Mobile  
9 App instructs it to perform HTTP GET requests—automatically, in the background, and  
10 invisibly—to hyperlinks embedded in posts viewed by the Mobile App user, including links  
11 contained with Ads.

12           38. An HTTP GET request is a hypertext transfer protocol (“HTTP”) function that  
13 requests data from a specified resource, such as an Advertiser’s website hyperlinked within an Ad.

14           39. If a Mobile App user clicks a hyperlink within an Ad displayed on the user’s  
15 mobile device screen, the Mobile App will send an HTTP GET request to the hyperlinked resource  
16 and register a proper cost-per-click charge.

17           40. Importantly, the Mobile App autonomously sends HTTP GET requests to resources  
18 hyperlinked within an Ad, and those requests are or routinely may be registered as clicks, even  
19 though no Mobile App user has clicked the Ad. Facebook debits these Stealth Clicks against the  
20 Advertiser’s Ad Budget and charges the Advertiser’s Payment Instrument for Stealth Clicks.

21           41. At relevant times, Facebook programmed the Mobile App to “pre-fetch” content it  
22 believes the user may consume or view next using HTTP GET requests which can create the  
23 Stealth Clicks at issue here. By way of example, when a user navigates through content on the  
24 Mobile App, the Mobile App, prior to the user initiating any activity, commonly implements rules  
25 to pre-load resources (*i.e.*, pre-fetch) to which elements on the viewed page link into the Mobile  
26 App’s cache, allowing for those resources to be more quickly loaded and displayed to the user in  
27 the event the user desires to click on those links. In this way, where a page contains Ads with  
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1 hyperlinks, the resources to which those hyperlinks points are pre-fetched and the Ad is charged  
2 with a Stealth Click.

3 42. Facebook labels pre-fetched clicks with a data trail that identifies a hyperlink as  
4 having been pre-fetched, or clicked, by Facebook itself and not by a user or third-party.  
5 Nevertheless, pre-fetched Stealth Clicks are charged to the Advertiser's Ad Budget and ultimately  
6 debited against the Advertiser's Payment Instrument.

7 43. Unlike actual clicks by users engaging an Ad, the Mobile App's Stealth Clicks do  
8 not result in any visible change on a user's screen (*e.g.*, a web browser window opening up to the  
9 Advertiser's website). Rather, the Stealth Clicks merely manifest as HTTP GET requests which  
10 occur in the background, hidden from the Mobile App user's view.

11 44. Effectively, a Stealth Click is not a "click" by a user and no user has seen or  
12 engaged the linked internet page or business profile to which the Ad was linked and to which the  
13 Advertiser desired to drive traffic.

14 45. Facebook imposes CPC charges for Stealth Clicks while users navigate Facebook  
15 pages and Ads (*e.g.*, by scrolling through the Mobile News Feed) but without the user performing  
16 tactile or manual click functions (*e.g.*, screen tap) or otherwise demonstrating any engagement that  
17 would be counted as a "click." Facebook charges Advertisers for Stealth Clicks even though they  
18 do not represent an actual user clicking or engaging their Ads.

19 46. Plaintiff and other Advertisers have paid for Stealth Clicks which: (a) were not  
20 triggered by a user actively engaging the Advertiser's Ad; and (b) did not otherwise present the  
21 target user with the linked resource, such as the Advertiser's website.

22 47. Facebook does not tell Advertisers about Stealth Click charges or that it charges  
23 Advertisers for such activity.

24 48. Facebook has improperly charged and collected money from Advertisers for  
25 Stealth Clicks generated by Facebook's Mobile App.

26 49. Ad data and billing information that Facebook shares with Plaintiff and other  
27 Advertisers includes but does not discretely identify Stealth Clicks or charges therefor, nor do  
28

1 Stealth Clicks signal to the Mobile App user that a “click” has occurred, making it virtually  
2 impossible for an Advertiser to know that it has been charged for them.

3 50. Moreover, merely clearing the cache on a user’s mobile phone may result in  
4 *repeated* Stealth Clicks as Facebook again automatically pre-fetches the same hyperlinks  
5 embedded in the same Ads.

### 6 **Plaintiff’s Experience**

7 51. Plaintiff placed numerous CPC Ads that were published on the Mobile App at  
8 relevant times. These Ads, and the associated data Facebook provided, were subject to Facebook’s  
9 undisclosed and improper practice of charging and debiting money for Stealth Clicks and  
10 providing accordingly-corrupted data and analytics for the Ads.

11 52. At such times, including between August 2016 and the present, Plaintiff placed  
12 numerous CPC Ads and, per the above-described practice, unknowingly paid for Stealth Clicks.  
13 Plaintiff read and relied upon analytics data Facebook provided to make advertising decisions,  
14 including at relevant times when the above-described Stealth Click practice was in place.

15 53. For example, Plaintiff purchased a CPC Ad campaign that ran from November 25  
16 to November 26, 2016, for his Hoversafe business. Facebook charged him and debited his  
17 Payment Instrument (his credit card) for 135 Facebook platform link clicks, including, per  
18 Facebook’s practice, Stealth Clicks.

19 54. As a result, Plaintiff paid money for pre-fetch Ad clicks that were autonomously  
20 initiated by Facebook’s Mobile App itself.

### 21 **Harms Resulting from Facebook’s Actions**

22 55. Facebook states that it “cannot control how clicks are generated on your ads,”<sup>5</sup>  
23 meaning Facebook’s controlled Stealth Clicks are not “clicks,” but Facebook has programmed its  
24 Mobile App to make/register Stealth Clicks and Facebook charges for them.

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28 <sup>5</sup> Self-Serve Ads Terms, available at [https://www.facebook.com/legal/self\\_service\\_ads\\_terms](https://www.facebook.com/legal/self_service_ads_terms), last accessed May 13, 2018.



1 that their individual joinder is impracticable.

2 63. As required by Fed. R. Civ. P. 23(a)(2) and (b)(3), commonality and predominance  
3 are satisfied because questions of law or fact common to Plaintiff and other Class members  
4 predominate over any individual question affecting only individual members, including, for  
5 example, as follows:

6 a. Did Facebook's Mobile App generate Stealth Clicks?

7 b. Is the Mobile App designed to autonomously send HTTP GET requests  
8 associated with an Ad hyperlink?

9 c. Does Facebook charge Advertisers for Stealth Clicks?

10 d. Does Facebook include Stealth Clicks in user click and engagement data it  
11 provides to advertisers about their ad campaigns?

12 e. Do Stealth Click charges constitute a breach of contract?

13 f. Do Stealth Click charges constitute a breach of the implied covenant of  
14 good faith and fair dealing?

15 g. Does Facebook's Stealth Click charges violate the California Business and  
16 Professional Code, Cal. Bus. Prof. Code § 17200?

17 h. Are Plaintiff and the Class entitled to injunctive relief?

18 i. Are Plaintiff and the Subclass entitled to an accounting under California  
19 law?

20 64. The claims asserted herein are based on California law which, per Facebook,  
21 applies to every member of the Class under the California choice of law provision in Facebook's  
22 Terms of Service.<sup>7</sup>

23 65. As required by Fed. R. Civ. P. 23(a)(3), Plaintiff's claims are typical of the claims  
24 of other members of the Class and Subclass. Plaintiff and all members of the Subclass purchased  
25 CPC Ads while Facebook's Stealth Click charge practice was in place. Plaintiff and other  
26 members of the Class published Ads on Facebook on a CPC or CPM basis.

27  
28 <sup>7</sup> <https://www.facebook.com/legal/terms/update>, last accessed May 24, 2018.

1 66. As required by Fed. R. Civ. P. 23(a)(4), Plaintiff will fairly and adequately protect  
2 the interests of the members of the Class. Plaintiff has no adverse or antagonistic interests to those  
3 of the Class and has retained counsel experienced in complex consumer class action litigation.

4 67. As required by Fed. R. Civ. P. 23(b)(2), injunctive relief - *e.g.*, Facebook's  
5 cessation of the Stealth Click practice - would apply to and benefit the entire Class.

6 68. As required by Fed. R. Civ. P. 23(b)(3), a class action is superior to other available  
7 means for the fair and efficient adjudication of this controversy. Each Class member's damages or  
8 other financial detriment is relatively small compared to the burden and expense he would incur  
9 through individual litigation of the claims against Facebook. It would be virtually impossible for  
10 individuals to obtain effective redress for the wrongs at issue through individual action.

11 Individualized litigation of these issues would cause delay and expense to all parties and the court  
12 system. By contrast, the class action device provides the benefits of adjudication of these issues in  
13 a single court and presents no unusual management difficulties under the circumstances here.  
14 And, Facebook maintains software code used to design the Mobile App used by Plaintiff and the  
15 Class, and tracks and records clicks charged, so that class-wide proofs are available.

16 **CAUSES OF ACTION**

17 69. The preceding paragraphs are re-alleged and incorporated as if set forth in full in  
18 each of the following Causes of Action, which are, to the extent the law or facts permit or require,  
19 alleged in the alternative.

20 **FIRST CAUSE OF ACTION**  
**Breach of the Contract**

21 70. Plaintiff repeats and re-alleges the preceding paragraphs as if fully set forth herein,  
22 and brings the First Cause of Action individually and on behalf of the Subclass.

23 71. Plaintiff and the Subclass accepted Facebook's offer to purchase CPC Ads on a  
24 cost-per-click basis, pursuant to Facebook's standardized terms, promises, conduct, and CPC Ad  
25 offer webpages.

26 72. Pursuant to the terms of the contract, Facebook published Plaintiff and Subclass  
27 member CPC Ads on the Facebook platform, in exchange for their agreement to be charged and  
28 have their Payment Instrument debited by Facebook on a Link Click (CPC) basis.



1 when the user clicks on the embedded Ad link shown to the user.

2 81. Pursuant to the contract, Facebook charged their Ad campaigns and unilaterally  
3 debited their accounts for charges on a per-click basis.

4 82. As part of the contract to sell cost-per-click ads to Plaintiff and the Subclass,  
5 Facebook promised, or represented to them, among other things, as follows:

6 a. That Plaintiff and the Subclass can purchase CPC Ads on Facebook.

7 b. That Plaintiff and the Subclass would pay for CPC Ads in proportion to the  
8 number of link clicks.

9 c. “When you purchase advertising or promoted posts on or through  
10 Facebook, you agree to pay all amounts specified in the order, along with any applicable  
11 taxes.” (Community Payments Terms applicable to advertiser payments, last visited Dec.  
12 15, 2017).

13 d. “When you run your ad, you’ll only be charged for the number of clicks or  
14 the number of impressions your ad received.” “How you’re charged,”  
15 [https://www.facebook.com/business/help/716180208457684?helpref=page\\_content](https://www.facebook.com/business/help/716180208457684?helpref=page_content).

16 e. “CPC (Cost per Link Click)” “shows how much, on average, each link click  
17 costs you,” and “is calculated as the total amount spent divided by link clicks,” which are  
18 “[t]he number of clicks on ad links to select destinations or experiences...” (Facebook  
19 Advertising Basics, last visited Dec. 17, 2017).

20 f. “You won’t be charged for your ad if you chose CPC pricing and it doesn’t  
21 receive any clicks.” (Facebook Advertiser Help Center, last visited Dec. 16, 2017).

22 83. As a result, Plaintiff and the Subclass had a right to receive the benefits of their  
23 contract – that is, to buy Ads on a cost-per-click basis, and to pay only for engagement by  
24 potential customers as quantified by Ad clicks without being charged for Facebook’s own Stealth  
25 Clicks.

26 84. Moreover, as opposed to other types of Facebook advertising transactions, such as  
27 CPM advertising where the advertiser pays based on the number of times an Ad is viewed,  
28 Facebook’s CPC Ads offer the distinguishing benefit of a much more targeted Ad campaign, where

1 dollars are paid based upon potential customers engaging the Ad—that is, the advertiser agrees to  
2 buy CPC Ads in order to pay only for engagement by users who are interested enough to engage or  
3 click on the published Ad.

4 85. Cost-per-impression or CPM is the default advertising method that Facebook offers  
5 to advertisers. Advertisers who use CPC Ads do so only because they have decided to pay more  
6 money in exchange for the benefits of an active engagement with a potential customer.

7 86. Facebook had an obligation to refrain from doing anything to injure Plaintiff and  
8 other Subclass members' right to receive the above-described benefits of the contract.

9 87. Facebook authored, published, and controlled all aspects of the operation of the  
10 Mobile App.

11 88. Facebook fully, directly, and unilaterally controlled how it counted and charged  
12 clicks to Plaintiff and the Subclass's Ads.

13 89. Facebook does not provide Advertisers details about the clicks that it charges to  
14 Plaintiff and Subclass members' Ad campaigns. Indeed, Facebook performs its side of the contract  
15 wholly on its own and does not share details about how or which clicks it has counted or charged.  
16 Advertisers must rely on Facebook's discretion and exercise of good faith as it properly calculates,  
17 charges, and debits their Payment Instruments for clicks.

18 90. Facebook unfairly injured and interfered with Plaintiff's and Subclass members'  
19 right to receive contract benefits when Facebook unilaterally, and without notice: (i) included code  
20 in the Mobile App that caused it to autonomously perform Stealth Clicks; (ii) counted Stealth  
21 Clicks as clicks charged to their CPC ad campaigns; (iii) automatically charged them for Stealth  
22 Clicks; (iii) charged for Stealth Clicks when debiting CPC charges from their Ad accounts; (iii)  
23 deprived them of engagement by Facebook users on a payable per Link Click basis; (vi) deprived  
24 them of a fair share of link clicks charged to and debited from their accounts; or (vii) charged them  
25 for Stealth Clicks run counter to the very purpose of the CPC ad, tracking and paying for user  
26 engagements. Facebook charges a CPC advertiser for one or more Stealth Clicks regardless of  
27 whether or not any Facebook user (or any third-party bot, for that matter) clicks on the link in the  
28 Ad.

1 91. Facebook's Stealth Click charge-and-debit practice demonstrates it has interpreted  
2 the contract terms to permit charges for clicks that Facebook controls.

3 92. Facebook's Stealth Clicks occur invisibly to the Mobile App user and charges related  
4 thereto are indistinguishable from other clicks for which Advertisers pay through the Ad Manager.  
5 In charging for Stealth Clicks, Facebook thus abused its discretionary power to deliver, count, and  
6 charge for CPC Ads.

7 93. Facebook's writing of computer code into the Mobile App to cause autonomous  
8 Stealth Clicks, along with Facebook's computer code that counts those Facebook clicks as  
9 chargeable "clicks," resulted in unearned CPC charges levied against Plaintiff and the Subclass's  
10 Ad Budgets, in bad faith and frustrating the agreed common purpose of the Facebook Terms and  
11 CPC Ad contracts, namely, to pay only for advertising that successfully directed Facebook users  
12 to click in the Ad.

13 94. Plaintiff and the Subclass complied with substantially all of their obligations under  
14 Facebook's terms of the contract including, without limitation, paying amounts for advertising  
15 charged by Facebook.

16 95. Facebook harmed Plaintiff and the Subclass by charging and debiting their  
17 accounts for Ad clicks that did not in-fact occur.

18 **THIRD CAUSE OF ACTION**  
19 **Accounting**

20 96. Plaintiff repeats and re-alleges the paragraphs 1-69 as if fully set forth herein, and  
21 brings the Third Cause of Action individually and on behalf of the Subclass.

22 97. Plaintiff and the Subclass accepted Facebook's offer to pay for advertising that was  
23 to be priced with the measure of link clicks or engagement by users for whom the advertisements  
24 were published.

25 98. Due to Facebook's Stealth Click practices, and contrary to the Facebook Terms and  
26 applicable law, Plaintiff and other Subclass members paid for CPC Ads which were never  
27 "clicked" or engaged by the user, but were autonomously clicked by Facebook's Mobile App.

28 99. In the alternative to calculating an estimate or sum certain of resulting damages or

1 money relief for Plaintiff and the Subclass, the relationship between Plaintiff and the Subclass on  
2 the one hand, and Facebook on the other hand, requires an accounting: the balance due to be  
3 returned to Plaintiff and the Subclass for monies Facebook took from them for its Stealth Click  
4 charging practices can only be ascertained by an accounting from Facebook, and facts needed to  
5 ascertain the balance due are known only by Facebook.

6 100. Facebook was solely responsible for counting the clicks on a CPC Ad campaign  
7 and owed a duty to do so accurately and appropriately. Facebook does not make available its  
8 discrete methods for counting clicks it charges to CPC Ad campaigns or for charging for Stealth  
9 Clicks and Facebook keeps records of Stealth Clicks and its charges therefore.

10 101. Plaintiff and the Subclass share a contractual relationship with Facebook, and the  
11 balance of money owed by Facebook to Plaintiff and the Subclass can only be ascertained by an  
12 accounting.

13 102. In the alternative to other causes pleaded here, absent an accounting, Plaintiff and  
14 the Subclass will suffer irreparable harm and will be unable to recover a fair or proper measure of  
15 damages or monies paid for Stealth Clicks.

16 103. Plaintiff and the Subclass have been harmed and Plaintiff seeks, for himself and the  
17 Subclass, an order requiring Facebook to account for all charges imposed for Stealth Clicks, to  
18 return monies it improperly debited for Stealth Clicks, and to provide further equitable relief.

19 **FOURTH CAUSE OF ACTION**  
20 **Violations of the Unfair Competition Law**  
21 **Cal. Bus. & Prof. Code §§ 17200, et seq.**

22 104. Plaintiff repeats and re-alleges the preceding paragraphs as if fully set forth herein,  
23 and brings the Fourth Cause of Action individually and on behalf of the Class and Subclass.

24 105. Facebook's acts and practices as alleged herein affect the general public and  
25 constitute fraudulent, unlawful, and unfair business practices in violation of California's Unfair  
26 Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.*

27 ***Fraudulent Conduct -***  
28 ***Inflated Charges***

106. Plaintiff and the Subclass purchased Facebook's CPC Ads at relevant times.

1 107. Facebook failed to disclose to Plaintiff and the Subclass—at the time they initiated  
2 their Ad campaigns, at the time of Ad purchase, indeed at any relevant times, and via Facebook’s  
3 website disclosures—that they would be charged for clicks autonomously generated by  
4 Facebook’s Mobile App.

5 108. Plaintiff reasonably relied upon Defendant’s representations of the number of  
6 clicks charged to his Ad campaigns, without being told that a portion of those click charges are  
7 attributable to Stealth Clicks.

8 109. Neither the Facebook Terms, nor Facebook’s Ad Manager or other Facebook tools  
9 for Advertisers disclose that that Advertisers will incur CPC charges for the Stealth Clicks.

10 110. Facebook’s Stealth Clicks occur invisibly to the Mobile App user, and charges that  
11 Facebook imposes on Advertisers for these pre-fetch clicks are indistinguishable from charges for  
12 other Ad clicks displayed via Facebook’s Ad Manager or data analytics.

13 111. Members of the public are likely to be deceived by Facebook above-described acts  
14 and omissions.

15 112. Plaintiff reasonably relied upon Facebook’s above-described omissions and  
16 concealment, and Facebook’s presentation of its CPC fee structure which nowhere referenced the  
17 Stealth Clicks, when he placed and purchased CPC Ads at relevant times when Facebook Stealth  
18 Click practice was in place.

19 113. Had Plaintiff known of the above-described omissions, Plaintiff would have paid  
20 less for his Ads or would not have paid for the improper Stealth Click charges.

21 114. As a result, Facebook’s conduct violates the UCL’s prohibition against  
22 “fraudulent” conduct, Cal. Bus. and Prof. Code § 17200 *et seq.*

23 ***Unlawful Conduct***

24 115. Facebook’s systematic breach of the covenant of good faith and fair dealing  
25 implied by the Facebook terms constitutes an unlawful business practice.

26 116. Alternatively, the terms for the purchase of CPC Ads as set forth above constitute a  
27 contract that Facebook breached by charging and debiting money from Plaintiff and the Subclass  
28 for Stealth Click charges and causing them resulting money damages.

1 117. As a result, Facebook’s conduct violates the UCL’s prohibition against “unlawful”  
2 conduct, Cal. Bus. and Prof. Code § 17200 *et seq.*

3 ***Unfair Conduct***

4 118. In the alternative, Facebook’s conduct, as alleged herein, is oppressive, immoral,  
5 unethical, and unscrupulous, caused Plaintiff and the Class substantial injury, and violates public  
6 policy, in violation of the UCL’s prohibition against “unfair” conduct, Cal. Bus. and Prof. Code §  
7 17200 *et seq.*

8 119. At all relevant times, Facebook was the author and publisher of the Mobile App.

9 120. Software functions written into the Mobile App by Facebook caused the Mobile  
10 App to perform Stealth Clicks, invisibly and unbeknownst to Plaintiff.

11 121. Any utility of Facebook’s conduct, for Advertisers, in authoring and publishing the  
12 Mobile App to generate unearned and unwarranted Stealth Clicks is outweighed by the economic  
13 injury it caused to Plaintiff and other Advertisers; and no countervailing benefit outweighs the  
14 gross injustice of imposing Stealth Click charges and providing inflated click data at will.

15 122. The breadth of Stealth Click charges, as a material portion of clicks charged by  
16 Facebook on CPC campaigns, caused Plaintiff and the Subclass substantial injury.

17 123. Moreover, the Ad metrics—specifically, link click metrics—Facebook provides to  
18 Plaintiff and the Class as part of their Ad purchases, in turn provides valuable information to Plaintiff  
19 and the Class about the effectiveness of the links included in their Ads, and informs future Advertiser  
20 advertising, business and budget decisions. At relevant times, Plaintiff received, reviewed, or relied  
21 upon the inflated or corrupted click data provided by Facebook for the purpose of making  
22 advertising decisions,

23 124. Discovery of the conduct at issue requires significant technical know-how.  
24 Plaintiff had no meaningful way to avoid the economic injury he suffered as a result of Facebook’s  
25 unfair conduct.

26 125. As a result of Facebook’s fraudulent, unlawful, and unfair conduct in violation of  
27 the UCL, Plaintiff and other Class and Subclass members were injured in fact, lost money or  
28 property, paid for Stealth Clicks wrongly charged and automatically debited by Facebook, and

1 paid for Ads which, as part of their Ad purchases, included Facebook inflated and corrupted Ad  
2 performance metrics.

3 126. Plaintiff and the Class and Subclass are also entitled to additional equitable and  
4 injunctive relief, including an order enjoining Facebook from continuing to charge for Stealth  
5 Clicks, an order requiring Facebook to provide an accounting of Stealth Clicks applied to  
6 Advertiser CPC Ad charges and Facebook Ad data, and an order enjoining Facebook from  
7 providing ad click data unless it excludes, segregates or otherwise properly accounts for Stealth  
8 Clicks.

9 **PRAYER FOR RELIEF**

10 **WHEREFORE**, Plaintiff, individually and on behalf of all others similarly situated, prays  
11 that the Court grant judgment against Defendant and provide the following relief:

- 12 **A.** Certify this case as a class action, and appoint Plaintiff as class representative and  
13 Plaintiff's counsel as class counsel;
- 14 **B.** Find and declare that Defendant's above-described conduct violates the California Unfair  
15 Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.*, and California law as set forth  
16 herein;
- 17 **C.** Issue injunctive and other equitable relief available under all applicable law, including,  
18 *inter alia*: (i) an order enjoining Defendant from providing Ad click data unless it  
19 excludes, segregates, or otherwise properly accounts for Stealth Clicks; (ii) an order  
20 prohibiting Defendant from continuing to engage in the above-described wrongful conduct  
21 and continuing to charge for Stealth Clicks (absent proper disclosures); (iii) an order  
22 requiring Defendant to provide an accounting of Stealth Clicks and Stealth Click charges  
23 generated for Advertiser CPC Ad campaigns; (iv) and an order requiring Defendant to  
24 more-clearly define the categories of clicks for which it charges Advertisers on a CPC  
25 basis;
- 26 **D.** Award damages, restitution, or restitutionary disgorgement of monies Defendant  
27 unlawfully obtained from Plaintiff and the Class as a result of its aforementioned conduct;
- 28 **E.** Establish a constructive trust, for the benefit of Plaintiff, the Class and Subclass consisting

- 1 of monies Facebook improperly collected due to its Stealth Click practices;
- 2 F. Award Plaintiff reasonable litigation expenses and attorneys' fees under applicable law
- 3 including Cal. Civ. Code § 1021.5; and
- 4 G. Provide such other and further relief as equity and justice may require.

5 **JURY DEMAND**

6 Plaintiff demands a jury trial as to all matters so triable.

7  
8 DATED: May 24, 2018

9 Respectfully submitted,

10 Tony Kramer, individually and on behalf of all  
11 other similarly situated

12 By: /s/ Kathryn S. Diemer  
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